UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RIGID PAK CORP.

and **CASE 12−CA−152811**

UNION DE TRONQUISTAS DE PUERTO RICO, LOCAL 901, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Ayesha K. Villegas Estrada, Esq., for the General Counsel.
Bayoan Muniz-Calderon & Ian P. Carvajal, Esqs., (Saldana Carvajal & Velez-Rive, PSC), for the Respondent.
Jose Carreras, Esq., for the Charging Party.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. This matter arises out of a complaint and notice of hearing (the complaint) issued on January 29, 2016, against Rigid Pak Corp. (the Respondent or the Company), stemming from unfair labor practice charges filed by Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters (the Union).

Pursuant to notice, I conducted a trial in San Juan, Puerto Rico, on April 20 and 21, 2016, at which I afforded the parties full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

Issues

(1) Did the February 12, 2015[1] contract between the Respondent and Alpla Caribe, Inc. (Alpla), which led to the March 31 layoff of all 28 unit employees, create a subcontracting situation coming under *Fibreboard Paper Products Corp. v.*

1 All dates hereinafter occurred in 2015 unless otherwise indicated.

NLRB, 379 U.S. 203 (1964); or a partial closing governed by *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981)?

(2) Depending on the answer to that, did the Respondent violate Section 8(a)(5) and (1) by not affording the Union an adequate opportunity to bargain over the decision to lay off unit employees and/or its effects?

(3) Since on about March 31 has the Respondent used employees of Laser Products, Inc. and a former supervisor to perform unit work at its facility, without affording the Union notice and an opportunity to bargain?

(4) If the Respondent's conduct violated the Act, is the appropriate remedy restoration of the status quo ante; or an effects bargaining remedy as per *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), and making unit employees whole for later unit work performed by nonunit employees?

Witnesses and Credibility

The General Counsel called Rafael Rosario (Rosario), the Union's vice president, who serviced the Respondent's unit employees; Brenda Rosario (Brenda Rosario), who was a production employee and shop steward; and Jose Carvajal, the Respondent's president and part-owner, as an adverse witness under Section 611(c). The Respondent called Carvajal as its sole witness in its case in chief.

Most of the pertinent facts in this case are stipulated.[2] All three witnesses seemed generally candid, and I have no reason to doubt their truthfulness as far as relating conversations. Both Carvajal and Brenda Rosario appeared to have detailed recall; Rosario somewhat less so. Their testimony generally did not differ much in substance. I note that Carvajal was quite consistent on 611(c) and direct examination on what was said in his discussions with union representatives.

The Respondent's counsel agrees with my assessment that Brenda Rosario was a credible witness but contends that Rosario was only partially credible because he contradicted himself on various occasions, and that on one point, Carvajal's testimony should be credited over his (R. Br. 3). According to the General Counsel, Carvajal's "self-serving" and unsupported testimony that labor costs were not a factor in deciding to close was incredible (GC Br. 23–24). The briefs do not otherwise address credibility per se.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, and stipulations, as well as the posttrial briefs that the General Counsel and the Respondent filed, I find the following:

Jurisdiction

The Respondent is a corporation with an office and place of business in Juncos, Puerto

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2 See Jt. Exhs. 1–3.

Rico. Prior to March 31, it engaged at its facility in Juncos (the facility) in manufacturing and distributing two types of containers and closures, injection-molded and blow-molded. The Respondent admits to the Board's jurisdiction,[3] and I so find.

The Parties Collective-Bargaining History Prior to March

Since in about March 1983, the Respondent has recognized the Union as the exclusive collective-bargaining representative of its employees in the following unit at the facility:

> All production and maintenance employees, including turners; excluding all office and clerical employees, production controllers, electricians, special project technicians, professionals, guards, and supervisors as defined in the Act.

Such recognition was embodied in a series of collective-bargaining agreements, the most recent of which was effective by its terms from August 1, 2010, to July 31, 2014.[4] Relevant provisions of the agreement are:

(1) The management rights to decide "[p]roducts to be manufactured and their prices," and "[m]ethods, procedures, and the means of manufacturing, distribution and management." Article IV.

(2) "The Company shall not subcontract any work that is normally done by [unit employees] if that subcontract[sic] results in laying off regular employees who are working at the time of that subcontracting." Article XX, section A(1).

The Respondent does not argue that any provisions in the agreement amount to a waiver by the Union of its rights to negotiate about subcontracting. Rather, the Respondent contends that the decision to enter into the agreement with Alpla was not subcontracting but a change in the scope and direction of the enterprise, supported by the management-rights clause (R. Br. 20). I also note that the General Counsel does not allege that the Respondent's actions in this case were motivated by antiunion considerations.

By letter and email dated April 30, 2014, Union Secretary-Treasurer Alexis Rodriguez Normadia (Rodriguez) requested that Carvajal negotiate for a new collective-bargaining agreement.[5]

Not until September (according to Carvajal) or December (according to Rosario and Brenda Rosario) did the parties meet on the subject.[6] Carvajal was present for the Company;

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3 GC Exh. 1(g) at 1; Jt. Exh. 1 at 2.

4 See GC Exh. 2, portions of the agreement. Part "A" of the exhibit is the original version in Spanish, with the English translation as part "B." The same holds true of other exhibits originally in Spanish.

5 GC Exh. 3.

6 In his affidavit, Rosario gave the month of the meeting as "around August." No one took minutes of the meeting or memoralized it in writing, so that when it occurred and what was said has to be based solely on witness testimony. In any event, whether the meeting took place in August, September or December is immaterial.

and Rosario and delegates (shop stewards) Brenda Rosario, and David Rodriguez attended for the Union. Carvajal, Rosario, and Brenda Rosario gave generally similar and not inconsistent versions of what occurred.

Carvajal stated that the Company was in a bad financial situation due to sales being down; that the Company had explored or was exploring alternatives, such as trying to get clients outside of Puerto Rico; and that he therefore was requesting an extension of the current collective-bargaining agreement for another year without any increases. He further stated that he would not ask the Union for concessions because the cost of labor was not the reason for the Company's economic situation and would not make a difference. Carvajal offered to show Rosario the Company's financial statements and financial information, but Rosario declined to see them. Rosario asked that if there was an increase in health insurance, the Company would absorb that, and Carvajal agreed. Rosario stated that the Union would take to its members Carvajal's proposal for an extension.

The parties held no further negotiations and never signed an extension agreement. Prior to March, the only further communications between Carvajal and Rosario occurred in passing, when Rosario was at the facility and Carvajal mentioned the Company's continued financial difficulties.

Respondent's Business Operation Prior to March 31

For many years, the Respondent manufactured plastic bottles made with high-density polyethylene through a blow-molding process, and open-head containers and lids and milk crates using high-density polyethylene through an injection-molding process.[7] Totally different equipment (machines, molds, and resins) were required for each of the processes, which were performed in separate areas or sides. No unit employees were specifically assigned to one side or the other; they worked on both sides and even could spend part of one shift on one side and part on the other, depending on where they were needed.

The number of unit employees reached about 100 at one time, but by March 31, there were only 28. They were machine operators, warehouse employees, or maintenance employees. Unit employees were responsible for all aspects of the process at the facility, from the manufacturing to the storing of both lines of products in the warehouse. Nonemployee independent truckers picked up the products and delivered them to customers.

Respondent's Financial Situation Prior to March

As a result of economic problems in Puerto Rico and declining sales, the Respondent experienced financial difficulties in the years immediately preceding 2015. The Respondent's Puerto Rico income tax return, filed on February 9, 2016, for the tax year from July 1, 2014, to June 30, 2015, shows a net operating loss of almost $903,000.[8] A financial statement

[7] See GC Exhs. 18, 19 (blow-molded products and injection-molded products, respectively, manufactured in 2004); and R. Exh. 6, showing blow-molding machines for sale in November, with photographs of the products. Some of them were still manufactured in 2015.

[8] R. Exh. 1. Wages for that period were approximately $363,000. Id. at 5.

prepared on December 18 by Luis B. Golzalez & Co., PSC, CPAs and consultants, shows the following:[9]

	Year ending June 30, 2014	Year ending June 30, 2015
Gross profit	$374,772	minus $226,262
Income from operations	minus $217,421	minus $836,408
Net loss	$275,322	$908,465
Advances from Laser Products, Inc. (no interest)	$700,000	$1,500,000
Dividends declared and paid	$137,320	$83,010

Carvajal looked for ways to increase sales, including exporting out of Puerto Rico; making alliances with competitors; or going into new products, specifically clear plastic bottles for which there was a big market in Puerto Rico. He determined that exporting was not feasible because the Company faced major competition in the continental United States and Latin America. Alpla was a major supplier of raw material for such bottles, and in October 2014, Carvajal met with Richard Lisch, Alpla's general manager, to discuss the possibility of the Respondent's buying raw material from Alpla to blow clear plastic bottles. After observing Alpla's operation and reviewing his situation, Carvajal came to the conclusion that the Company had neither the capital nor the human resources necessary to buy and efficiently run the sophisticated equipment needed. He further determined that the Company could not stay in the plastic bottling manufacturing business because it did not have the updated equipment and cost structure necessary to compete. Thereafter, he discussed with Lisch the alternative of having the Respondent's product produced at Alpla's facility.

Respondent's Agreement with Alpla

After negotiations, the Respondent and Alpla ultimately signed a supply agreement on February 12.[10] By its terms, the Respondent delivered its injection-molding equipment (machines and molds) to Alpla's plant but has remained the owner of that equipment; Alpla is wholly responsible for manufacturing, packaging, storing, and delivering the containers to the Respondent's customers under the Respondent's logo;[11] and the Respondent pays Alpla for those products at a discounted rate. The Respondent provides the raw materials for the manufacturing. The Respondent also purchases blow-molding products with its logo, for which Alpla provides the raw materials and machines. Alpla prepares and submits to the Respondent quality control records and reports, and a reasonable number of samples from each production run of products for quality purposes. The Respondent has the right, upon reasonable notice, to send one or more of its employees to observe and inspect the manufacturing, warehousing, and other facilities that Alpla uses to produce, package, store, and ship products. Carvajal has been to Alpla's plant four times in the past year.

9 R. Exh. 2.

10 GC Exh. 4. See also Jt. Exh. 3 (injection-molding products that the Respondent would purchase: lids, pails, and milk crates).

11 The Company's name is embossed in the molds and therefore on every container.

As a result of the agreement, the Respondent planned to entirely cease manufacturing operations at its facility and to sell the blow-making equipment. Carvajal determined that the price Alpla would charge for manufacturing containers and selling them to the Company would enable the Company to resell them at small profit and pay back its debt.

Carvajal testified that he wanted to keep their negotiations and the agreement confidential prior to the cessation of manufacturing operations so that his business competitors would not try to take away his customers in advance of the closing.

Respondent's Notification to the Union

Carvajal testified that it took him about 2 weeks after he signed the contract, or until late February, to determine how much time was needed to transfer the machines and have them operating at Alpla to avoid any interruption in supplying the Respondent's customers.

I credit Carvajal's uncontroverted testimony as follows. On March 5, he called Union Secretary Treasurer Rodriguez and requested a meeting. Rodriguez did not answer the phone. Carvajal had heart surgery on March 6 and called Rodriguez again on March 9. He told Rodriguez that it was "urgent" that they sit down and meet but did not specify why because he "didn't want to advance any information" concerning the shutdown.[12] Rodriguez stated that the first date he had available was on March 17.

Carvajal and Rodriguez met for about an hour at a restaurant on March 17. Carvajal started by letting Rodriguez know that he was closing the plant because the Company's sustained losses were over $1 million; that the Company's injection-molding equipment would be moved to Alpla, which would manufacture the injection-molded products; and that the Company would go out of the blow-molding business and sell its blow-molding equipment. This was the first knowledge the Union had of the Alpla agreement and resulting plant closing.

Rodriguez asked if Carvajal had any money for a severance package, and Carvajal replied no. Carvajal asked for Rodriguez' help in informing employees of the closing, and Rodriguez asked if he could meet with them at the facility. Carvajal agreed. Rodriguez said that he would contact Rosales and the union delegates to arrange to assemble the employees, and would call Carvajal back about this.

In testifying on 611(c) examination, Carvajal said nothing about giving Rodriguez a date for the closure; however, in later direct examination, he testified that he told Rodriguez the closing would be "by the end of March."[13] I believe it highly likely that Carvajal either mentioned a specific time frame for the closing or that Rodriguez would have asked for, and been provided, with that information. It is highly implausible that the date would not have been brought up in their conversation in light of the momentous impact on unit employees. Accordingly, I find that Carvajal informed Rodriguez that the closure would occur by the end

12 Tr. 190.

13 Tr. 193.

of March.

Carvajal, Rosario, and Brenda Rosario all testified about meeting after March 17 regarding the plant closure. Carvajal and Brenda Rosario testified about attending only one meeting, but Rosario testified that there were two. Carvajal and Rosario gave a meeting date of March 26, whereas Brenda Rosario gave it as April 5. Based on the contents of Carvajal's March 30 letter to Rodriguez,[14] I find that one meeting was held on March 26.

On March 26, Carvajal and Eric Romero, the Company's controller, met with Rosario and Union Stewards Brenda Rosario and David Rodriguez in the facility's conference room. Carvajal repeated what he had told Rodriguez on March 17. He stated that the last day of manufacturing operations would be the following day, March 27, and that the last work day for unit employees would be March 31. Rosario asked if it would be a total or partial shutdown, to which Carvajal replied that it was total, and even the official clerical employees were going to be let go. Rosario asked whether Carvajal would consider rehiring laid-off employees if he reopened within the next 2 years, and Carvajal said yes but that he had no plans to reopen. Romero asked if Carvajal could give a bonus due to the closing, but he said no because he did not have the money. Rosario asked if the Company could advance the Christmas bonus instead of waiting until December, and Carvajal agreed to calculate the amounts and hand them over at closing. Rosario also asked for liquidation for accrued sick leave and vacation leave, and he and Carvajal agreed on a date on which the Company would pay those amounts. Carvajal further stated that the employees would have a month of paid medical insurance after the plant closed because the premiums had already been paid.

By letter and email of March 30 to Rodriguez, Carvajal confirmed some of what was said about the closing at their March 17 meeting and at his March 26 meeting with Rosario.

On March 31, the Respondent issued layoff letters to all unit employees.[15] The only written agreement that the parties reached regarding the closure was a stipulation that Carvajal and Rosario signed on April 15, concerning calculation of the Christmas bonus up until the date of the closing.[16]

Respondent's Operation after March 31

As per its agreement with Alpla, the Company paid to move all four of its injection-molding machines and its injection molds to the Alpla facility, on April 15, 28, and May 29.[17] The Respondent sold its biggest blow-mold machine, used to manufacture bleach bottles, for $120,000 on about July 1; its four remaining blow-mold machines and 26 molds, which are still at the facility, are currently on the market for sale.[18]

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14 GC Exh. 5. The reference therein to "Rafael Rodriguez" was an error.

15 See GC Exh. 8 (sample letter).

16 GC Exh. 7.

17 See GC Exhs. 20–22.

18 See R. Exhs. 3, 6, 7.

Since March 31, the Respondent has purchased both injection-molded and blow-molded products from Alpla.[19] Alpla delivers approximately 95 percent of the products that it manufactures for the Respondent directly to the Respondent's customers; the remainder is delivered to the facility, for pickup by the Respondent's smaller customers or for emergencies. Alpla contracts directly with the trucking companies that make the deliveries.

Some inventory remained at the facility after March 31. The Respondent had nonunit employees move left over inventory to containers, for delivery to customers. These included Edward Rivera Mojica, who was working as a Company supervisor in the warehouse in March. No raw materials are delivered to the facility; the raw materials that the Respondent buys for its injection-molded products are delivered directly to Alpla.

Carvajal is president of Laser Products, Inc. (Laser), which owns the property on which the facility is located and was one of Respondent's customers. Laser is engaged in packaging household chemicals and producing a bleach. It now has an account with Alpla, and the Respondent no longer provides it with any product. Laser uses the facility's warehouse for its finished products. The General Counsel does not contend that Laser is an alter ego of, or a successor employer to, the Respondent.

Carvajal had Laser employees perform unit work at the facility the weeks ending April 19 and May 3.[20] In the first week, six employees worked for a total of 72 hours and were paid $830.84; in the second week, eight employees worked for a total of 275 hours and were paid $2994. They produced both injection containers and blow bottles, and some of them loaded trailers. The Respondent never gave the Union prior notice of this.

On May 18, the Union picketed the facility. Carvajal invited Rodriguez, Rosario, and Brenda Rosario inside. Rodriguez asked why he was still in production when he had allegedly closed the business, and stated that unit employees should do that work. Carvajal denied this, saying that he had to turn on the machines in order to keep them in working condition before moving them out of the building. He explained that he did not call unit employees because it would have been a nuisance for them due to the small amount of hours that they have to report to the unemployment office. Brenda Rosario pointed out that there was still product in the plant and that moving product inside the facility was unit work.

That same day, Rodriguez sent a follow-up letter and email to Carvajal, confirming what the Union had observed as to production work and movement of stored merchandise; reiterating that such was unit work; requesting discussions about resuming operations with unit personnel; and demanding that unit employees be paid for the work that was performed by nonunion personnel.[21]

Currently, three Laser employees, including Mojica, handle product at the facility. Approximately 90 percent is household chemicals for Laser; the remainder is injection-mold

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19 See GC Exhs. 12–16.

20 See GC Exhs. 10, 11.

21 GC Exh. 9.

products that are manufactured by Alpla for the Company and delivered for pickup by small customers. No manufacturing is done at the facility. The Company presently employs three administrative employees, who work in accounting; Carvajal's nephew; a messenger; a handyman, who does maintenance and cleaning; and Carvajal. These employees worked for the Company before March 31.

Prior to the closing, the Respondent's utility and maintenance costs were nearly $2 million a year. As a result of closing the manufacturing operation at the facility, the Respondent has greatly reduced maintenance, infrastructure, and utility costs, and is no longer responsible for defective products.

The Respondent continues to advertise as a manufacturer of both injection-molded and blow-molded products. See GC Exhs. 17–19.

Analysis and Conclusions

The Appropriate Analytical Framework

The threshold issue is how to properly characterize the nature of the change in the Respondent's operation because that will determine the scope of the Respondent's bargaining obligation. The General Counsel take the position that a subcontracting analysis is appropriate and that the Respondent had an obligation to bargain over both the decision and its effects, as per *Fibreboard Corp. v. NLRB (Fibreboard)*, 379 U.S. 203 (1964) (GC Br. 16, et. seq.). On the other hand, the Respondent contends that it closed its operations and changed the scope and direction of its business, so that its bargaining obligation was limited to bargaining over the effects but not over the decision itself, under *First National Maintenance Corp. v. NLRB (First National)*, 452 U.S. 666 (1981) (R. Br. 14, et. seq.).

Section 8(d) of the Act provides than an employer has the obligation to bargain with respect to wages, hours, and other terms and conditions of employment. In *Fibreboard,* above at 210, et. seq., the Court determined that contracting out of unit work that unit employees are capable of continuing to perform comes under Section 8(d) and is therefore a mandatory subject of bargaining. The Court noted, id. at 213–214:

> The facts of the present case illustrate the propriety of submitting the dispute to collective negotiation. The Company's decision to contract out the maintenance work did not alter the Company's basic operation. The maintenance work still had to be performed in the plant. No capital investment was contemplated; the Company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment. Therefore, to require the employer to bargain about the matter would not significantly abridge his freedom to manage the business.

The Court also emphasized that the respondent's desire to reduce labor costs was at the base of the employer's decision to subcontract and that this was a matter "peculiarly suitable for resolution within the collective bargaining framework." Ibid.

The Court clarified that its decision was limited to subcontracting where bargaining unit employees are replaced with those of an independent contractor to do the same work under similar conditions of employment ("Our decision need not and does not encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex economy." Id. at 215).

In *First National*, above, the Court discussed entrepreneurial management decisions involving a change in the scope and direction of the enterprise that have a direct impact on employment but have as their focus only economic profitability wholly apart from the employment relationship. The Court, balancing the benefits to be derived from collective bargaining with management's need for freedom to make decisions necessary to run a profitable business, set forth the following test:

> [I]n view of an employer's need for unencumbered decisionmaking, bargaining over managements decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business.

452 U.S. at 679. In addressing a partial shutdown for purely economic reasons, the Court distinguished *Fibreboard* and concluded, id. at 686 (emphasis in original):

> [T]he harm likely to be done to an employer's need to operate freely in deciding whether to shut down part of its business for purely economic reasons outweighs the incremental benefit that might be gained through the union's participating in making the decision, and we hold that the decision itself is *not* part of § 8(d)'s 'terms and conditions'. . . ."

The Court noted that the employer had no intention to replace the discharged employees or to move the operation elsewhere, that the sole purpose for the closing was to reduce economic loss, and that the employer's decision was based on a factor over which the union had no control or authority. The Court was careful to clarify that its holding was limited to the particular situation presented and was not intended to cover other types of management decisions, such as "plant relocations, sales, other kinds of subcontracting, automation, etc., which are to be considered on their particular facts." Id. at 686 fn. 22.

Accordingly, the Court concluded that the employer's bargaining obligation was limited to bargaining over the effects of the decision, "in a meaningful manner and at a meaningful time." Id. at 681–682.

In *Dubuque Packing Co.*, 303 NLRB 386, 390–391 (1991), the Board harmonized the differing results in *Fibreboard* and *First National* in the context of an employer's relocating unit work from one of its plants to another of its plants. The Board noted that in *First National*, the employer did not replace its employees or move its operation elsewhere, whereas in *Fibreboard*, the employer replaced existing employees with those of an

independent contractor (at its facility). In *First National*, the employer made a decision whether to be in business at all, whereas in *Fibreboard*, the employer's decision did not change the company's basic operation. Finally, in *First National*, the decision was based on the amount of customer payment, whereas in *Fibreboard*, reduction of labor costs was the core reason for the decision to subcontract.

In *Torrington Industries*, 307 NLRB 809, 810 (1992), the Board did not apply the burden-shifting test set out in *Dubuque Packing* to a layoff of unit employees and their replacement with a nonunit employee and independent contractors at the respondent's facility. Rather, the Board applied *Fibreboard* when the employer replaces employees in the existing bargaining unit with those of a contractor to perform the same work and "virtually all that is changed through the subcontracting is the identity of the employees doing the work." Id. at 811. See also *Mi Pueblo Foods*, 360 NLRB No. 116, slip op. at 3 (2014).

As the Board recognized in *Bob's Big Boy Family Restaurants*, 264 NLRB 1369, 1370 (1982) (footnotes omitted), "The distinction between subcontracting and partial closing . . . is not always readily apparent," and, accordingly,

> [I]t is incumbent on the Board to review the particular facts presented in each case to determine whether the employer's action involves an aspect of the employer/employee relationship that is amenable to resolution through bargaining with the union since it involves issues "particularly suitable for resolution within the collective bargaining framework." If so, Respondent will be required to bargain over the decision. If, however, the employer's action is one that is not suitable for resolution through collective bargaining because it represents "a significant change in operations," or a decision lying at "the very core of entrepreneurial control," the decision will not fall within the scope of the employer's mandatory bargaining obligation.

Factors to be examined are the nature of the employer's business before and after the action taken, the extent of capital expenditures, the bases for the action, and, in general, the ability of the union to engage in meaningful bargaining in view of the employer's situation and objectives. Ibid.

In that case, the respondent had completely phased out its shrimp processing operation (one department out of five) at the facility in question, sold the department's machines to Fishking, and returned other machines to the lessor. The Board, in finding that this constituted subcontracting rather than a partial closing, noted at the outset that:

> Respondent did not engage in what can be objectively termed a major shift in the direction of the Company. Both before and after the subcontract, Respondent engaged in the business of providing prepared foodstuffs to its various stores. Indeed, it appears that *Respondent still supplies processed shrimp to its constituent restaurants*. The only difference is that the processing work is now performed by Fishking employees pursuant to the subcontract rather than by Respondent's employees. Accordingly, the nature and direction of Respondent's business was not substantially altered by the subcontract.

Id. at 1371 (footnotes omitted; emphasis in original). Secondly, the Board noted that when the subcontracting arrangement became operative, the respondent was not required to engage in any substantial capital restructuring or investment, that the plant area devoted to shrimp processing remained part of the respondent's facility, and that the respondent retained substantial ownership of the equipment that had been used in shrimp processing. Ibid.

Accordingly, the Board concluded that the respondent's decision to subcontract its shrimp processing operation did not represent a substantial change in the nature or direction of the respondent's business and did not otherwise entail sufficient capital restructuring to remove the decision from the scope of its mandatory bargaining obligation.

In *O.G.S. Technologies, Inc*., 356 NLRB 642, 645, (2011), the Board engaged in a similar analysis in concluding that the respondent's termination of a portion of it operation constituted subcontracting that required bargaining over both the decision and its effects, concluding:

> In contrast to *First National Maintenance*, OGS made certain operational changes, but they did not amount to a 'partial closing' or other 'change in the scope and direction of the enterprise,' which remained devoted to the manufacture and sale of brass buttons to the same range of customers. Before and after the decision to subcontract die cutting, OGS produced and supplied brass buttons to customers. . . . The decision at issue simply resulted in a marginal increase in the percentage of cutting work the Respondent subcontracted and a modest change in the functions performed in-house, but not the abandonment of a line of business or even the contraction of the existing business.

See also *Chemical Solvents, Inc.*, 362 NLRB No. 164, slip op. at 7 (2015) (outsourcing of trucking operation at facility was appropriately classified as subcontracting, a mandatory subject of bargaining).

The core question, then, is whether the nature and direction of Respondent's business was substantially altered by its contract with Alpla. If so, then the change in operation is more appropriately treated as a partial closing that comes under *First National,* rather than as a subcontract situation under *Fibreboard*. The Respondent argues (R. Br. 19–20) that it is no longer a manufacturer but a reseller and that it has no control whatsoever over the Alpla employees who now operate the machines. On the contrary, the General Counsel contends (GC Br. at 18) that the Respondent's basic operation continues unchanged, except for the fact that Alpla is providing the labor, and that the Respondent remains in the business of producing and supplying plastic bottles and containers that are sold to the same customers as in the past.

The Respondent did not go out of business or even completely close its operation at the facility. Thus, even today, some injection-mold products are transported from Alpla, stored in the facility warehouse, and picked up there by customers. Prior to Mach 31, bargaining unit employees moved product inside the facility, and some of this work continues

today.

The Respondent is not totally divorced from the production process of injection-mold products at Alpla. Thus, the Respondent still owns the injection-mold machinery and molds, and provides Alpla with the raw material for those products. Alpla prepares and submits to the Respondent quality control records and reports, and a reasonable number of samples from each production run of products for quality purposes. The Respondent is given the right, upon reasonable notice, to send one or more of its employees to observe and inspect the manufacturing, warehousing and other facilities that Alpla uses to produce, package, store and ship products, and Carvajal did this four times during the past year. The Respondent therefore maintains some oversight authority over the manufacturing process and, consequently, Alpla does not have unfettered sole control.

Moreover, the Respondent still sells injection-mold products (with the Respondent's name and logo) directly to customers that it supplied prior to the subcontracting. In sum, the Respondent has not closed the injection-mold portion of its operation but rather transferred the production to Alpla.

As far as the blow-mold side of the operation, no production has occurred at the facility (other than during 2 weeks in 2015), but the Respondent does purchase some blow-molded products from Alpla and resells them to customers that it had before March 31. One of the five blow-mold machines has been sold; the other four are still maintained at the facility and remain for sale. The Respondent continues to advertise itself as a supplier of both injection-molded and blow-molded products. Finally, the Respondent engaged in no capital restructuring.

Based on the totality of circumstances above, I conclude that despite changes in the production situs and in the employer of the employees who produce the products, the nature of the Respondent's business, including many of its types of products and its customers, remained substantially unchanged. Thus, the nature of the change in the operation was a subcontracting situation, not a partial plant closure. Even if there was a partial closure (of the blow-mold operation), bargaining unit employees worked interchangeably with blow-molded and injection-molded products, and bifurcating the two operations in terms of the bargaining obligation would be infeasible and unworkable.

The Respondent points out that its labor costs in 2014–2015 were a little over $360,000, whereas its net losses were over $900,000, and argues that no amount of concessions from the Union would have made any difference in the decision to contract with Alpla. Carvajal testified to this effect. However, in *Pertec Computer Corp.*, 284 NLRB 810, 810 at fn. 3 (1987), decision supplemented 298 NLRB 609 (1990), enfd. in relevant part sub nom. *Olivetti Office U.S.A., Inc. v. NLRB*, 926 F.2d 181 (2d Cir. 1991), cert. denied 502 U.S. 856 (1991), the Board discounted the bare assertion that bargaining over the decision to relocate and subcontract unit work would be pointless because the union would never agree to wage cuts substantial enough to make reversal of the decision economically sound:

> Indeed, to conclude in advance of bargaining that no agreement is possible is the antithesis of the Act's objective of channeling differences, however profound, into a

> process that promises at least the hope of mutual agreement. See *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970). On the other hand, once bargaining to impasse has occurred, the futility of continuing is clear. Also see *NLRB v. Katz*, 369 U.S. 736 (1962).

See also *Geiger Ready-Mix Co. of Kansas City*, 315 NLRB 1021, 1032 (1994) ("[a]n employer must offer something more than a self-serving assertion that there was nothing the bargaining agent of its unionized employees could do to change its mind.").

Nor has the Respondent shown that bargaining to impasse or agreement over the decision would have jeopardized its business in any way. *Pertec Computer Corp.*, above at 811; see also *Olivetti Office U.S.A. v. NLRB,* above at 186. In this regard, such negotiations would not necessarily have threatened the Respondent's confidentiality concerns during its negotiations with Alpla. The Union presumably would have had the opportunity to provide suggestions on ways to reduce the Respondent's cost of conducting business at the facility using unit employees, not to have been made privy to the details of proposed contractual arrangements between the Respondent and Alpla. To assume that the Union would have breached the Respondent's confidentiality concerns is as unwarranted as assuming bargaining over the decision would have been futile. See *Pertec Computer*, ibid. (disclosure of information ordered where the respondent had not shown the union to be unreliable in respecting confidentiality agreements); see also *People Care*, *Inc.*, 299 NLRB 875, 875–876 (1990).

Accordingly, I conclude that the Respondent was obliged to engage in bargaining over the decision to contract out unit work with Alpla and lay off unit employees.

Effects Bargaining

Even if the Respondent had not been obliged to bargain over the decision to subcontract, it nonetheless remained obligated to bargain over the effects of the decision "in a meaningful manner and at a meaningful time." *First National*, above, at 681–682; *Miami Rivet of Puerto Rico*, 318 NLRB 769, 772 (1995). As the Board stated in *Allison Corp.*, 330 NLRB 1363, 1365 fn. 14 (2000), "Effects bargaining can include such topics as layoffs, severance pay, health insurance coverage and conversion rights, preferential hiring at other of the employer's operations, and reference letters for jobs with other employers."

Effects bargaining must occur sufficiently before actual implementation of the decision so that the union is not presented with a fait accompli. *Komatsu America Corp.*, 342 NLRB 649, 649 (2004); *Woodland Clinic*, 331 NLRB 735, 738 (2000). Relevant to this determination is whether the union is afforded an opportunity to bargain at a time when it still represents employees upon whom the company relies for services, thus allowing the union to retain some measure of bargaining power. *Komatsu America Corp.,* ibid; *Metropolitan Teletronics Corp.,* 279 NLRB 957, 959 (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987).

The Respondent avers that it met its obligation to engage in effects bargaining (R. Br. 22–23). The General Counsel contends that the timing of the Respondent's notification to the

Union, as well as Carvajal's misleading the Union about postlayoff labor needs, precluded any meaningful effects bargaining (GC Br. 27–28). I agree with the General Counsel for the following reasons.

The Respondent executed its contract with Alpla on February12 yet Carvajal admittedly did not tell the Union of the plant closure until March 17, over a month later and less than 2 weeks before the last working day of unit employees. Carvajal testified that it took him about 2 weeks after February 12 to arrive at an exact closing date, but at the time he signed the Alpla agreement, he certainly must already have contemplated a general time frame for the closing. I would expect this of an experienced business person such as Carvajal.

Carvajal's telling Rodriguez on March 9 that it was "urgent" that they meet failed to amount to valid notice of the shutdown. In *Penntech Papers, Inc.*, 706 F.2d 18, 27 (1st Cir. 1983), the First Circuit Court of Appeals rejected the respondents' argument that the unions were put on notice of a possible shutdown when a management representative made "an oblique reference to a possible closure," instead finding that "a vague remark cannot pass for 'reasonable notice' of a shutdown as mandated by the Act." Carvajal's remark was wholly ambiguous and gave absolutely no hint of a shutdown.

Carvajal's asserted reason for not disclosing the impending shutdown to Rodriguez on March 9—confidentiality concerns—also fails as a valid defense. Indeed, in *Williamette Tug & Barge Co.*, 300 NLRB 282, 282–283 (1990) (footnotes omitted), the Board recognized an employer's need for confidentiality during negotiations to sell a business but concluded that such a legitimate concern "does not obviate the employer's duty to give pre-implementation notice to the union to allow time for effects bargaining, provision for which may be negotiated in the sales agreement." The Board went on to hold that:

> [B]arring particularly unusual or emergency circumstances, the union's right to discuss with the employer how the impact of the sale on the employees can be ameliorated must be reckoned with . . . sufficiently before its actual implementation so that the union is not confronted at the bargaining table with a sale that is a fait accompli.

Id. at 283. See also *Pertec Computer Corp.*, above; *People Care*, *Inc.,* above.

In *Williamette Tug*, the Board stated that same-day notice is "clearly insufficient" but did not determine "exactly how many days' notice" would be adequate. Id. at 283; see also *Compact Video Services*, *Inc.,* 319 NLRB 131, 131 fn. 1 (1995) (the Board specifically declined to pass on the judge's conclusion that notice had to be given by the date on which the sales contract was executed). See also *Pertec Computer Corp.*, supra; *People Care*, *Inc.,* supra. The Respondent has not contended any unusual or emergency circumstances.

Accordingly, I conclude that the Respondent did not have good reason to wait until March 17 to notify the Union of the plant closure and the layoff of unit employees, thereby depriving the Union of more time to negotiate the effects thereof. The Union could have been more assertive in negotiating, but I cannot say that the result would have been the same had the Union been notified earlier and had more time to talk with employees, formulate

proposals, and bargain over them with the Respondent.

On March 26, Rosario asked if the shutdown would be total or partial, to which Carvajal replied that it was total, and even the official clerical employees were going to be let go. However, it is undisputed that Carvajal had Laser employees perform unit work at the facility the weeks ending April 9 and May 3, for a total of 347 hours. Some of them produced both injection containers and mold bottles, and some of them loaded trailers. Merchandise was also moved in the warehouse after March 31. Thus, contrary to what Carvajal represented, unit work was in fact performed at the facility after all of the unit employees were laid off.

The Respondent (R. Br. 23–24) contends that the Union waived its right to bargain about the postclosing warehouse work related to moving merchandise produced prior to the closing. Crediting Carvajal, the Union mentioned nothing about this during effects bargaining even though, the Respondent argues, the Union had to know that there would be leftover merchandise that would have to be moved and loaded into trailers.

Waiver of a right to bargain must be clear and unmistakable. *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693, 708 (1983); *Allison Corp.*, above at 1365 ("[I]t must be shown that the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter."). See also *Provena St. Joseph Medical Center,* 350 NLRB 808, 810 et seq. (2007). If the matter of the above work was not even mentioned during effects bargaining, then ipso facto it could not have been "fully discussed," and the Union could not have "consciously yielded its interest." Accordingly, I conclude that there was no such waiver.

For the above reasons, I further conclude that the Respondent failed to meet its obligation to bargain over the effects of the contracting out of unit work and layoff of unit employees.

Nonunit Employees Performing Unit Work at the Facility after March 31

Assignment of work is a mandatory subject of bargaining. *WCCO-TV,* 362 NLRB No. 101, slip op. at 2 (2015); *Regal Cinemas, Inc.*, 334 NLRB 304, 304 (2001), enfd. 317 F.3d 300 (D.C. Cir. 2003) (2003). Thus, an employer violates the Act by reassigning work performed by bargaining unit employees to supervisors or other individuals outside the unit without providing the collective-bargaining representative notice and an opportunity to bargain. *St. George Warehouse, Inc.*, 341 NLRB 904, 904–906, 924 (2004), enfd. 420 F.3d 294 (3d Cir. 2005); *Stevens International*, *Inc.,* 337 NLRB 143, 143 (2001); *Regal Cinemas, Inc.*, above. This obligation is not lessened because the transfer is motivated by economic considerations. *Talbert Mfg., Inc.*, 264 NLRB 1051, 1056 (1982).

Following the layoffs of all unit employees, the Respondent used employees of Laser and former supervisor Mojica to move leftover product in the warehouse. Laser employees performed production work at the facility during the weeks of April 9 and May 3. Carvajal did not have the prerogative of deciding for the laid off employees that they would not want to work a small number of hours, but should have given them the opportunity to make their own

decisions. Currently, three Laser employees, including Mojica, at the facility handle injection-mold products that are manufactured by Alpla for the Company and delivered for pickup by small customers.

The Respondent does not dispute that all of the above work was performed by bargaining-unit employees prior to March 31 and that the Union was never afforded advance notice that any of it would be performed by nonbargaining-unit employees.

Accordingly, I conclude that the Respondent violated Section 8(a)(5) and (1) by transferring bargaining unit work to Laser employees and former supervisor Mojica without providing the Union with notice and an opportunity to bargain.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By the following conduct, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:

(a) Laid off all unit employees on March 31, 2015, without having afforded the Union adequate notice and an opportunity to meaningfully bargain over the decision to subcontract unit work and the effects of that decision.

(b) Thereafter transferred bargaining unit work at the facility to nonunit employees without providing the Union with notice and an opportunity to bargain.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel argues that the appropriate remedy would be an order directing the Respondent to restore the status quo ante. I do not deem such remedy suitable here. As in *Bob's Big Boy Family Restaurant*, supra, where the Board declined to order such a remedy, it is clear that the Respondent subcontracted its operation for nondiscriminatory economic and related business reasons. The Respondent was in serious financial trouble prior to the March 31 layoffs, has a firmly-established contractual relationship with Alpla; has transferred the entire production operation to Alpla, has gone to the expense of moving injection-mold equipment to Alpla; and has already sold one of the blow-mold machines. This is not a case where only one department or portion of a facility has been closed, or only some of the unit employees have been laid off, in which event restoration would be relatively simple. In these circumstances, I am "reluctant to compel Respondent to restore its previous operation and modify its production one or more times depending upon the results of its bargaining with the

Union." Id. at 1372. In sum, ordering restoration of the status quo ante would place an unreasonable hardship on the Respondent and possibly jeopardize its contract with Alpla, potentially throwing its entire operation into chaos and resulting in great financial detriment to the Company without any benefit to unit employees.[22]

The General Counsel contends, in the alternative, that I should order a *Transmarine*[23] remedy, and I agree that "effectuation of the purposes and policies of the Act requires that the discharged employees be 'reimbursed for such losses until such times as the Respondent remedies its violation[s] by doing what it should have done in the first place.'" Ibid, citing *Winn-Dixie Stores*, 147 NLRB 788, 792 (1964).

Accordingly, I order the Respondent to bargain with the Union about the decision to subcontract unit work to Alpla, and its effects. I further order the Respondent to pay employees who were laid off on March 31 their normal wages when in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the Respondent bargains to agreement with the Union about the decision to subcontract unit work to Alpla, and the effects thereof; (2) the parties reach a bona fide impasse in bargaining; (3) the Union fails to request bargaining within 5 days after the receipt of this decision, or to commence negotiations within 5 days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union subsequently fails to bargain in good faith. In no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from the date the employee was laid off to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employee would have earned for a 2-week period at the rate of his or her normal wages when last in the Respondent's employ. Backpay shall be based on the earnings that the employees would normally have received during the applicable period, less any interim net earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, the Respondent shall compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years. See *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

The General Counsel also seeks an order requiring the Respondent to reimburse the laid off employees for search-for-work and work-related expenses that they have incurred while searching for work regardless of whether they received interim earnings for a particular

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22 I recognize that Carvajal has related business interests (i.e., Laser and possibly other companies), but the General Counsel has not alleged any alter ego relationships that might bear on this analysis and lead to a contrary conclusion, and I will not engage in speculation over Carvajal's overall financial situation.

23 *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

quarter. Those employees are entitled to reimbursement for expenses incurred in their search for interim employment, but at present the Board treats such expenses as an offset to an employee's interim earnings rather than calculating them separately. *West Texas Utilities Co.*, 109 NLRB 936, 939 fn. 3 (1954). I am obliged to follow existing Board precendent. See *Pathmark Stores, Inc.*, 342 NLRB 378, 378 fn. 1 (2004); *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). Therefore, I must deny the General Counsel's request for this additional remedy.

The General Counsel has also requested that, along with a *Transmarine* remedy, I order that unit employees be made whole for later unit work performed by nonunit employees. However, but for the Respondent's agreement with Alpla and the elimination of all production at the facility, this would not have occurred. As such, the violation appears to be subsumed within the violation of failing to bargain over the decision to subcontract to Alpla, and the effects thereof.

I order that the appropriate notice be posted in Spanish and English.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

The Respondent, Rigid Pak Corp., Juncos, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off unit employees and subcontracting their work without first affording the Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters (the Union) adequate notice and an opportunity to bargain over the decision to subcontract the work, and its effects.

(b) Transferring bargaining unit work at the facility to nonunit employees without first affording the Union adequate notice and an opportunity to bargain.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain, on request, with the Union about the decision to subcontract unit work to Alpla, and its effects.

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[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Bargain, on request, with the Union about using nonunit employees to perform bargaining unit work at the facility.

(c) Pay employees who were laid off on March 31 in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Juncos, Puerto Rico, copies of the attached notice marked "Appendix,"[25] in Spanish and English. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 31, 2015.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 8, 2016

Ira Sandron
Administrative Law Judge

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

An employer subject to the National Labor Relations Act must collectively bargain with the labor organization that represents its employees concerning wages, hours, and working conditions.

The Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters (the Union) represents a unit of our production and maintenance employees.

WE WILL NOT subcontract unit work and lay you off without first affording the Union adequate notice and an opportunity to bargain over the decision to subcontract the work, and its effects on you.

WE WILL NOT transfer unit work at our facility to nonunit employees without first affording the Union adequate notice and an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act, as set forth at the top of this notice.

WE WILL, on request, bargain in good faith with the Union about our decision to subcontract unit work to Alpla Caribe, Inc., and its effects on you.

WE WILL, on request, bargain in good faith with the Union about our using nonunit employees to perform unit work at our facility.

WE WILL pay you in the manner set forth in the remedy section of this decision.

RIGID PAK CORP.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

201 East Kennedy Boulevard, Suite 530, Tampa, FL 33602-5824
(813) 228-2641; Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-152811 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.